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Presentment Date: January 20, 2010  
Time: 12:00 p.m.

Objections Due: January 20, 2010  
Time: 10:00 a.m.

*Attorneys for Irving H. Picard, Esq., Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
And Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S MOTION FOR AN ORDER APPROVING  
THE RETENTION OF KUGLER KANDESTIN, L.L.P. AS SPECIAL  
COUNSEL *NUNC PRO TUNC* AS OF SEPTEMBER 1, 2009**

Irving H. Picard, Esq. ("Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. ("SIPA"),<sup>1</sup> and Bernard L. Madoff ("Debtor")

<sup>1</sup> For convenience, future reference to SIPA will not include "15 U.S.C."

or “BLMIS”), by and through his undersigned counsel, for his motion (the “Motion”) for authority to retain special counsel *nunc pro tunc* to September 1, 2009, and respectfully represents as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this Application pursuant to SIPA section 78eee(b) and 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this SIPA liquidation case and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 78eee(b)(3) of SIPA and sections 327(e), 328, 329 and 330 of the Bankruptcy Code and Fed. R. Bankr. P. 2014.

### **Background**

3. On December 11, 2008 (the “Filing Date”),<sup>2</sup> the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York against defendants Bernard L. Madoff and BLMIS (together, the “Defendants”) (No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of BLMIS.

4. On December 12, 2008, the Honorable Louis L. Stanton of the United States District Court for the Southern District of New York entered an order which appointed Lee S. Richards, Esq., as receiver (the “Receiver”).

5. On December 15, 2008, Judge Stanton entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

- a) appointed the Trustee for the liquidation of the business of the Debtor pursuant to section 78eee(b)(3) of SIPA;

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<sup>2</sup> See section 78lll(7)(B) of SIPA.

- b) appointed Baker & Hostetler LLP as counsel (“Counsel”) to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- c) removed the case to this Bankruptcy Court pursuant to section 78eee(b)(4) of SIPA.

6. Issues have arisen in Canada that require the Trustee’s participation and representation by counsel. The Trustee has become aware of assets that he believes to be customer property located in Canada and requires counsel to pursue such customer property.

**Relief Requested**

7. The Trustee has determined that it will be necessary to engage counsel to represent him in Canada. Such legal counsel will enable the Trustee to carry out his duties in this SIPA liquidation proceeding. The Trustee, therefore, proposes to retain and employ the law firm of Kugler Kandestin, L.L.P. (“Kugler”) as its special counsel with regard to its recovery of customer property in Canada, and any related matters as directed by the Trustee, effective as of September 1, 2009.

8. The Trustee seeks to retain Kugler as special counsel because of its knowledge and expertise in the laws of Canada.

9. The services of Kugler are necessary and essential to enable the Trustee to execute faithfully his duties herein.

10. Kugler has indicated a willingness to act on the Trustee’s behalf to render the foregoing professional services.

11. The Trustee submits that Kugler’s provision of professional services to the Trustee is permissible under section 78eee(3) of SIPA and is in the best interest of the Debtor’s estate and customers and creditors.

12. To the best of the Trustee’s knowledge, and except as disclosed in the declaration of disinterestedness of Gordon Levine (the “Levine Declaration”), executed on January 7, 2010

and annexed hereto as Exhibit A, the members, counsel and associates of Kugler are disinterested pursuant to section 78eee(b)(3) of SIPA and do not hold or represent any interest adverse to the Debtor's estate in respect of the matter for which Kugler is to be retained. Kugler's employment and retention is necessary and in the best interests of the Debtor's estate and its customers and creditors.

13. Kugler will be compensated at agreed upon rates, listed below, which reflect a reduction of its normal rates by ten percent (10%). Applications for compensation to Kugler will be filed with this Court pursuant to applicable statutes and rules. Kugler's rate information is as follows:

Level of Experience	Normal Rates	Agreed Upon Rates
Partner	CDN\$450-600	CDN\$405-560
Associate	CDN\$200-300	CDN\$180-270
Paralegal	CDN\$95	CDN\$85.50

14. SIPC has no objection to this Motion and, pursuant to SIPA section 78eee(b)(3), SIPC specifies that the Trustee should be authorized to retain Kugler as special counsel for the purposes identified herein.

#### **Notice**

15. Notice of this Motion has been given to SIPC, United States Department of Justice, United States Securities and Exchange Commission and all parties that have filed a notice of appearance herein. In light of the nature of the relief requested, the Trustee submits that such notice is good and sufficient, and no other or further notice is necessary or required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B hereto, (a) granting this Motion; (b) authorizing the Trustee to employ Kugler as special counsel for the purposes described herein, *nunc pro tunc*, as of

September 1, 2009; and (c) granting the Trustee such other and further relief as is just and proper.

Dated: New York, New York  
January 11, 2009

Respectfully submitted,

s/Marc E. Hirschfield

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